

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

vs.

SI-NOR, INC.,

Respondent.

CASE NO. OSH 2003-17

ORDER NO. 187

ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION
AND/OR TO REOPEN CASE, FILED
ON FEBRUARY 27, 2006

ORDER DENYING RESPONDENT'S MOTION FOR
RECONSIDERATION AND/OR TO REOPEN CASE, FILED ON FEBRUARY 27, 2006

On February 27, 2006, Respondent SI-NOR, INC. (SI-NOR), by and through its counsel, filed a Motion for Reconsideration and/or to Reopen Case with the Hawaii Labor Relations Board (Board) pursuant, in part, to Rule 60, Hawaii Rules of Civil Procedure (HRCPP).¹ SI-NOR's counsel stated in a Declaration in support of the motion that he recently received copies of Safety Training sign-in sheets from its former insurer during litigation discovery which was previously believed to have been lost in SI-NOR's container office. SI-NOR's counsel contends that the documents purport to demonstrate that safety meetings were being held and further states that the documents suggest that Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS's (DIRECTOR) witnesses were less than candid in their testimony. SI-NOR thus requests that the Board reconsider its decision in this case and/or reopen the case to provide Respondent with the opportunity to submit these exhibits into evidence and further cross examine relevant witnesses.

¹HRCPP Rule 60(b) provides in part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

HRCPP Rule 59(b) provides:

A motion for a new trial shall be filed no later than 10 days after entry of judgment.

Thereafter, on March 9, 2006, Complainant DIRECTOR, by and through his counsel, filed a Memorandum in Opposition to SI-NOR's motion. The DIRECTOR contends that Respondent's motion is not supported by the Board's rules or HRCP Rule 60. Moreover, even if HRCP Rule 60 applied, the DIRECTOR argues that SI-NOR has not shown that it could not have found "newly discovered" with due diligence. The DIRECTOR contends that SI-NOR's motion further lacks merit because according to its Safety Policy Manual, SI-NOR was supposed to keep its training records at its main office for three years. In a footnote, the DIRECTOR argues there is no merit to SI-NOR's excuse of its belated production based on its belief that the records were lost in the container vandalism as that incident occurred in 2000 prior to the generation of the documents. Accordingly, the DIRECTOR argues that SI-NOR's motion to reopen its case after the issuance of the Board's decision should be denied.

On March 20, 2006, the Board conducted a hearing on the instant motion and provided full opportunity to the parties to present argument to the Board.

The Board has previously considered motions for reconsideration of its final decisions and orders. And, in considering the instant motion, the Board notes "[t]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10 (1992). "Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Tagupa v. Tagupa, 108 Hawai'i 459, 465, 121, P.3d 924, 930 (2005); Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) (quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

Based on the record in this case and the arguments presented, the Board is not convinced that the evidence is probative and could not have been discovered or produced previously. The DIRECTOR correctly argues that the records should have been in SI-NOR's main office at the time of its inspection and produced upon request. The instant citation was issued on June 26, 2003; the hearings in this case were held in May 2004 and the briefs filed in August 2004. Thus, the Board finds SI-NOR failed to establish when the documents became available and why it could not have produced it earlier than the filing of the present motion on February 27, 2006. Having considered the arguments and authorities presented by SI-NOR, the Board is not persuaded that its findings of fact and conclusions of law in Decision No. 11, issued on February 15, 2006 should be reconsidered and the case reopened. Accordingly, the instant motion for reconsideration and/or to reopen this case is denied.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. SI-NOR,
INC.

CASE NO. OSH 2003-17

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION AND/OR TO
REOPEN CASE, FILED ON FEBRUARY 27, 2006

DATED: Honolulu, Hawaii, March 23, 2006.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


KATHLEEN RACYA-MARKRICH, Member

Copies sent to:

Preston A. Gima, Esq.
J. Gerard Lam, Deputy Attorney General